

AMENDATORY SECTION(Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-95-010 Notice of union security obligation. (1) ~~((Whenever))~~ With respect to union security obligations contained within a collective bargaining agreement negotiated under ((the provisions of)) chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW ((contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement, and shall specifically advise each employee of his or her obligations under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

~~—(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.~~

~~—(3) Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter)), this commission's jurisdiction is limited to resolving disputes regarding an employee's right to assert nonassociation.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 28B.52.045, 41.56.122, 41.59.100, 41.76.045 and 41.80.100. 03-03-064, § 391-95-010, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-010, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), § 391-95-010, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-030 Assertion of right of nonassociation. An employee who ~~((claims))~~ desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative~~((, and))~~.

An employee asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045 shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-030, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058

(Order 88-10), § 391-95-030, filed 5/31/88. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-030, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-95-036 Special provision -- State civil service employees. An employee who desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative.

An employee asserting the right of nonassociation under [RCW 41.80.100](#) may provide the exclusive bargaining representative with his or her choice to receive funds paid under the union security provision, if such a list is published by the exclusive bargaining representative.

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AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-050 Response by exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under [WAC 391-95-030](#), the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative ~~((as to both))~~ on the matter.

(1) For employees who desire to assert the right of nonassociation under [RCW 28B.52.045](#), 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the response of the exclusive bargaining representative shall address:

~~((1))~~ (a) The eligibility of the employee to make alternative payments; and

~~((2))~~ (b) The acceptance or rejection of the charitable organization(s) suggested by the employee under [WAC 391-95-030](#).

(2) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.045](#), [41.56.122](#) and [41.59.100](#). 00-14-048, § 391-95-050, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-050, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-050, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-95-056 Special provision -- State civil service employees -- Response of

exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-036, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative on the matter.

(1) For employees asserting the right of nonassociation under RCW 41.80.100, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and either

(b) If designated by the employee under WAC 391-95-036, acceptance or rejection of the program or charitable organization designated by an employee under WAC 391-95-036; or

(2) If the employee fails to designate a program of the exclusive bargaining representative that would be in harmony with the employees' individual conscience under WAC 391-95-036, the employee organization shall provide a list of designated program(s) of the employee organization to receive funds paid under the nonassociation provision to the employee.

(3) Within sixty days after being presented with a list under this subsection, the employee asserting a right of nonassociation shall provide the employee organization with written notice of his or her designation of the purpose or purposes on that list, if any, that are in harmony with his or her individual conscience. If the employee fails to timely designate a program, the labor organization may choose a program from the list, provided that the list clearly informs the employee of this consequence. The employee may subsequently choose a different program.

(4) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

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AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-070 Disputes resolved by commission. ~~((If the exclusive bargaining representative:))~~

(1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to
~~((make alternative payments))~~ assert the right of nonassociation; or

~~((2))~~ (b) The exclusive bargaining representative disputes the charity or charitable organization which ~~((is to receive such))~~ the employee desires to be the recipient of alternative payments; or

~~((3))~~ (c) The exclusive bargaining representative fails to make a timely response under [WAC 391-95-050](#)~~((, either the employee or the exclusive bargaining representative may obtain a ruling from the commission))~~; or

(d) The employee claiming nonassociation fails to name a charity or charitable organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.045](#), [41.56.122](#) and [41.59.100](#). 00-14-048, § 391-95-070, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-070, filed 7/1/98, effective 8/1/98; 90-06-075, § 391-95-070, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-070, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-95-076 Special provision -- State civil service employees -- Disputes resolved by commission. (1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to assert the right of nonassociation; or

(b) The exclusive bargaining representative disputes the program of the employee organization which the employee desires to be the recipient of alternative payments; or

(c) The exclusive bargaining representative fails to make a timely response under [WAC 391-95-056](#); or

(d) The employee claiming nonassociation fails to name a program of the employee organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

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AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-130 Escrow of disputed funds ((by employer)). Funds at issue in a nonassociation proceeding under this chapter shall be kept separate while the case remains pending before the commission. Upon being served with a copy of a petition filed under WAC 391-95-070 concerning employees asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Funds held in escrow shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. This section shall be applicable to employees covered by chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction and escrow of disputed funds.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-130, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-95-130, filed 1/6/81.]

NEW SECTION

WAC 391-95-136 Special provision -- State civil service employees -- Escrow of funds. Funds at issue in a nonassociation proceeding under this chapter shall be kept in escrow while the case remains pending before the commission.

(1) Upon being served with a copy of a petition filed under WAC 391-95-076 concerning an employee asserting the right of nonassociation under RCW 41.80.100, the employee organization shall preserve the status quo by holding the disputed funds in a separate account, and shall not request the discharge or other action against the affected employee based on the employee's union security obligations, until the proceedings under this chapter are concluded.

(2) While the nonassociation proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

NEW SECTION

WAC 391-95-220 Settlement conference. Separate from any prehearing conference concerning procedural matters held by the examiner under [WAC 10-08-130](#), a settlement conference concerning substantive issues may be held under [WAC 10-08-200](#)(15).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the nonassociation proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to mediate between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying nonassociation proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the nonassociation dispute. Participation in a settlement conference is voluntary and refusal by a party to participate in a settlement shall not prejudice that party in any manner. Conversations had and offers made in a settlement mediation shall not be admissible in evidence at a hearing.

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-230 Hearings -- Reopening of hearing -- Briefs. (1) Hearings shall be public and shall be limited to the portions of a petition found to state a cause of action under [WAC 391-95-150](#).

(2) The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(a) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the objection is based on a bona fide religious teaching of a church or religious body; and

(iii) That the claimant employee is a member of such church or religious body.

(b) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the religious nature of the objection is genuine and in good faith.

(3) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(4) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties to the proceeding as required by [WAC 391-08-120](#) (3) and (4).

(5) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.045](#), [34.05.437](#), [41.56.122](#) and [41.59.100](#). 00-14-048, § 391-95-230, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-230, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-230, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.045](#), [41.56.122](#) and [41.59.100](#). 90-06-075, § 391-95-230, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-058 (Order 88-10), § 391-95-230, filed 5/31/88. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-230, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-250 Examiner decision. (1)(a) A party seeking review by the commission of an interlocutory decision of the hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The issuance of a preliminary ruling by the executive director, his or her designee, or a hearing examiner under [WAC 391-95-150](#); or

(ii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under [WAC 391-95-270](#), a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.045](#), [41.56.122](#) and [41.59.100](#). 00-14-048, § 391-95-250, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-250, filed 7/1/98, effective 8/1/98; 90-06-075, § 391-95-250, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-95-250, filed 9/16/85. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-270 Appeals. An order issued under [WAC 391-95-150](#)(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with [WAC 391-08-180](#). Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief to address novel and/or complex legal or factual issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.045](#), [34.05.464](#), [41.56.122](#) and [41.59.100](#). 00-14-048, § 391-95-270, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-270, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-270, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.045](#), [41.56.122](#) and [41.59.100](#). 90-06-075, § 391-95-270, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-95-270, filed 9/16/85. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-051 (Order 80-10), § 391-95-270, filed 9/30/80, effective 11/1/80.]